

Self-Directed Services
Proposed Implementation Statute

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Revised Language for Self-Directed Services

SEC. 14. Section 4685.7 is added to the Welfare and Institutions Code, to read:

4685.7 (a) The self-determination projects described in Section 4685.5 shall be available in every services within the 21 regional center catchment areas, and consistent with federal approval of a self-directed waiver, and the requirements shall expand as set forth in this section. In order to provide opportunities to participate in a self-directed services program, the ~~State Department of Developmental Services~~ shall adopt regulations to implement the procedures in this section.

For purposes of this section, the following definitions shall apply:

(1) "Financial management services" means a service or function that assists the participant family or individual to manage and direct the distribution of funds contained in the individual budget. This may include activities that facilitate the facilitation of the employment of service workers by the participant family or individual, including, but not limited to, federal, state, and local tax withholding or payments, unemployment insurance premiums, setting of wages and benefits, compensation fees, wage settlements, fiscal accounting, and expenditure reports. Specific qualifications shall be established by the department and required of a financial management services provider.

(2) "Supports brokerage" means a service or function that assists participants participating families and individuals to make informed decisions about their individual budget, and assists in locating, accessing, and coordinating services consistent with and reflecting a participant's their needs and preferences reflect individual circumstances. The service is available to assist in identifying immediate and long-term needs, developing options to meet those needs, participating in the person-centered planning process and development of the individual program plan, and obtaining identified supports and services.

(3) "Supports broker" means a person, selected and directed by the participant, who fulfills the supports brokerage service or function and assists the participant's participation in facilitates communication between the individual enrollee and the self-directed services program, identifying and assisting as needed to assure individuals and their families understand the responsibilities involved with directing one's own services. ~~The supports broker fulfills the supports brokerage service or function.~~ Specific qualifications shall be established by the department and required of a supports broker provider.

(4) "Waiver" means a waiver of federal law pursuant to Section 1396n of Title 42 of the United States Code.

(5) "Independence Plus Self-Directed (IPSD) Waiver Program" or "Self-Directed Waiver Program" means a federal waiver to the state's Medicaid plan to that provides for a delivery of services program that allows people with developmental disabilities who need or require long-term supports and services, and their families, greater opportunity to control his or her own health by utilization of self-directed services.

(6) "Self-determination services," "SDS" or "self-directed services" or "SDS" means a voluntary delivery system consisting of a defined and comprehensive mix of integrated and inclusive services and supports selected and directed by a participant in order to that enhance the ability of an individual or his or her family, as appropriate, to control the decisions and resources required to meet all or some of the objectives in his or her individual program plan. ~~Any references to "self-determination services" shall have the same meaning as self directed services.~~ SDS services and supports are designed to assist the participant to achieve personally defined outcomes in the most

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inclusive community settings. Self-directed services shall include, but are not limited to, home health aide services, supported employment and prevocational services; respite services; supports brokerage functions and services, financial management services and functions; environmental accessibility adaptations; skilled nursing; transportation; specialized medical equipment and supplies; personal emergency response system; integrative therapies; vehicle adaptations; communication support; crises intervention; nutritional consultation; behavior intervention services; specialized therapeutic services; family assistance and support, housing access supports, community living supports, including but not limited to socialization, personal skill development, community participation, recreation, leisure, home and personal care; advocacy services; individual training and education; participant- designed goods and services; training and education transition services. The department shall include all of the services and supports listed in this subsection in the IPSD Waiver Program application. Notwithstanding this subsection, only services and supports included in an approved IPSD Waiver shall be provided in the SDS Program.

(7) “Individual budget” means the amount of funding ~~monetary value of services~~ available to the participant family or individual for the purchase of services and supports necessary to implement an ~~support the individual's individual program plan.~~ The individual budget is constructed using a fair, equitable, and transparent methodology.

(8) “Risk pool” means an ~~aggregate account comprised of a portion of each self-directed services participant's yearly individual budget~~ that is available ~~allocated~~ for use in addressing unanticipated needs of participants in the self-directed services program.

(9) ~~“Employer of record” refers to the individual, or legally authorized representative, functioning in the capacity of controlling what tasks self directed service providers will perform and how the tasks will be performed. The term “employer of record” is a generic terms that refers to the legal employer of a worker. and in a self-directed program includes service workers hired directly by individuals.~~

~~(10) “Congregate setting” means an environment in a defined geographical area, the makeup of which is defined by the presence of people with disabilities roughly disproportionate to that of the population at large.~~

(9) “Participant” means an individual, and when appropriate, his or her parents, legal guardian or conservator, or authorized representative, who have been deemed eligible for, and have voluntarily agreed to participate in, the Self-Directed Services Program.

(c) The Self-Directed Services Program is hereby established and shall be available in every regional center catchment area, to provide participants ~~individuals with developmental disabilities greater control to purchase needed services and supports~~ within an individual budget, greater control of needed services and supports. ~~The methodology for determining individual budgets shall be detailed in departmental regulations and shall limit the individual budgets to 90 percent of historic annual purchase of service costs for consumers with similar characteristics at the regional center that established the consumer's individual program plan. It is the intent of the Legislature that 5 percent of the annual appropriation for the SDS Program will go to a risk pool for consumer's unanticipated needs, and 5 percent will be reflected as savings to the state in the SDS Program.~~

(d) Participation in the SDS Program is fully voluntary. Participants must choose to participate in, and may choose to leave, the SDS Program at any time. A regional center may not require participation in the SDS Program as a condition of eligibility for, or the delivery of, services and supports otherwise available under this Division.

(e) Prior to enrollment in the SDS Program, and based on the methodologies

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described below, an individual, and when appropriate, his or her parents, legal guardian or conservator, or authorized representative, shall be provided in writing two individual budget amounts. If the individual, and when appropriate his parents, legal guardian or conservator, or authorized representative, elects to become a participant in the SDS Program, he or she shall choose which of the two budget amounts provided will be used to implement their individual program plan.

(f) The methodologies and formulae for determining the two individual budget amounts shall be detailed in departmental regulations, as follows:

(1) One individual budget amount shall equal 90 percent of the most recent consecutive 24 months of purchase-of-service expenditures for the individual.

(2) One individual budget amount shall equal 90 percent of the aggregate annual purchase of service costs for the previous two fiscal years for consumers with similar characteristics, based on factors including age, type of residence, type of disability and ability, functional skills, and whether the individual is in transition. This budget methodology shall be constructed using data available on the State Department of Developmental Services information system.

(g) Once a participant has selected an individual budget amount, pursuant to (f), that individual budget amount shall be available to the participant for the purchase of self-directed services until a new individual budget amount has been determined.

(h) A regional center's calculation of a participant's individual budget amount in subsection (f)(2) shall be appealed to the executive director of the regional center within 30 days of receipt. The executive director shall issue a written decision within 10 working days. The individual may appeal to the Director of the Department of Developmental Services, or his or her designee, any decision made by the regional center executive director pursuant to this subdivision within 15 days of receipt of the written decision. The decision of the department shall be final.

(i) The department shall establish a risk pool to meet the unanticipated needs of participants in the SDS Program.

(1) In the first year of the SDS Program, the risk pool shall be funded at the equivalent of 5 percent of the historic annual purchase of service costs for SDS Program participants. In ensuing fiscal years, the risk pool shall be funded at the equivalent of 5% of the annual purchase of service costs for the prior two fiscal years for SDS Program participants.

(2) The risk pool shall be allocated by the department to regional centers through a process specified by the department.

(3) The risk pool may be used only in the event of substantial change in a participant's service and support needs that were not known at the time the individual budget was set such as an urgent need to relocate a residence, and catastrophic injury or illness.

(4) The risk pool may be accessed by a participant more than once in a lifetime.

(j) In the first year of the SDS Program, the department shall provide for establishment of savings to the general fund equivalent to 5% of the historic annual purchase of service costs for SDS Program participants. In ensuing fiscal years, the department shall provide for establishment of savings to the general fund equivalent to 5% of the annual purchase of service costs for the prior two fiscal years for SDS Program participants.

(k) The regional center may advance funds to a financial management services entity pursuant to SDS Program regulations to facilitate development of a participant's individual budget and transition into the SDS Program.

(l) Participation in the SDS Program shall be available to any regional center consumer who meets the following eligibility requirements:

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~~Self-directed services programs shall include, but not be limited to, all the following requisites:~~

(1) ~~In order to participate in a self-directed services program, an individual~~ A participant shall be three years of age or older.

(2) ~~An individual receiving services in a licensed residential services facility or other congregate setting shall make satisfactory arrangements for voluntary discharge from such living arrangements upon enrollment a self-directed services program. A participant shall not live in a licensed residential facility, as defined in California Code of Regulations, Title 17, Section 54302(44) and 543402(45), or receive day program services, as defined in California Code of Regulations, Title 17, Section 54302(16). An individual, and when appropriate, his or her parents, legal guardian or conservator, or authorized representative, who is not eligible to participate in the SDS Program pursuant to this subsection, may request that the regional center provide person-center planning services in order to make arrangements for transition to the SDS Program. In such case, the regional center shall initiate person-centered planning services within 60 days of a request.~~

(3) ~~The individual~~ A participant shall have a developmental disability as defined in Section 4512.

(4) ~~The individual shall reside in a regional center geographic area where a self-directed services program is available. Upon a determination by the individual program plan planning team that the SDS Program is an appropriate service delivery for meeting the individual's needs, a participant~~

(5) ~~The individuals~~ shall accept all of the following terms and conditions:

(A) The person shall undergo an in-depth orientation to the SDS Program prior to enrollment.

(B) The person shall agree to utilize the services and supports available within the SDS Program only when generic services cannot be accessed ~~are not available, and~~ except for Medi-Cal state plan benefits when applicable.

(C) An individual who is not Medi-Cal eligible may participate in the SDS Program without IPSD Waiver Program enrollment and receive self-directed services if all other IPSD Waiver Program eligibility requirements are met ~~and a recent history of service needs is evidenced by regional center service utilization.~~

(D) ~~A participant n individual who is utilizing any services and supports shall~~ A participant shall consent to use only services necessary to implement his or her individual program plan as described in the IPSD Waiver Program and as defined in paragraph 6 of subsection (b), as an available service in the ~~self-directed services p~~ SDS Program and shall agree to comply with any and all other terms and conditions for participation in the ~~self-directed services p~~ SDS Program.

(E) The person shall accept and manage self-directed services within the individual budget amount that has been calculated ~~established~~ by the regional center ~~planning team~~, and described in the ~~individual participant's~~ individual program plan.

(F) The individual budget amount shall be calculated no more than once in a 12-month period.

(G) The person shall employ the services of a financial management services entity for the purposes of payroll, disbursement of funds, and related duties pursuant to the ~~participant's individual's~~ approval. A financial management services provider may either be hired or designated by the participant. A designated financial management services provider shall perform services on a non-paid basis. A participant and his or her parent shall ~~An individual may~~ provide financial management services only as a designated provider and ~~only on his or her own behalf~~ if the capacity to fulfill the roles

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and responsibilities as described in the financial management services provider qualifications can be demonstrated to the regional center.

(H) The participant individual shall utilize the services of a supports broker for the purpose of providing services and functions as described in paragraphs (2) and (3) of subdivision (b). A supports broker may be either hired or designated by the participant. A designated supports broker shall perform support brokerage services on a non-paid basis. ~~An individual~~ A participant or his or her parent ~~may~~ shall provide supports brokerage services only as a designated supports broker and only ~~on his or her own behalf, or his or her designated representative may provide the services on behalf of the individual,~~ if the capacity to fulfill the role and responsibilities as described in the supports broker provider qualifications can be demonstrated to the financial management services provider.

~~(6)~~ (5) The participant shall individual, ~~except when the individual is a minor, will implement his or her individual program plan self-directed services.~~ An adult participant may designate an authorized representative to effect the implementation. ~~In the case of a minor, a legally responsible family guardian, or conservator will implement the self-directed services. In the event that an adult individual in a self-directed program is unable to fully implement his or her identified services, there shall be an authorized representative who may be a family member, friend, legal guardian, other legally appointed representative to effect the implementation.~~ The representative shall meet all of the following requirements:

(A) He or she shall demonstrate knowledge and understanding of the participant's ~~individual's~~ needs and preferences.

(B) He or she shall be willing and able to comply with SDS Pprogram requirements.

(C) He or she shall be at least 18 years of age.

(D) He or she shall be approved by the participant individual to act in the capacity of a representative.

~~(e)~~ (m) If at any time during participation in a ~~self-directed~~ SDS Program a regional center determines that an individual is no longer eligible to continue based on the criteria described in subdivision (k) ~~(e)~~, the regional center shall inform the participant individual of his or her ineligibility and shall provide for the individual's transition from the SDS Program to other services and supports. This shall include the development of a new individual program plan that reflects the services and supports necessary to meet the individual's needs. Upon determination of ineligibility pursuant to this subdivision, the participant shall be sent written notice of the fair hearing rights, as required by Section 4701. The regional center shall ensure there is no gap in services and supports during the transition period.

~~(f)~~ (n) An individual determined ineligible as described in subdivision (l) ~~(e)~~, or who voluntarily exits the SDS Program shall be permitted to return to the SDS Program upon meeting all applicable eligibility criteria and after a minimum of 12 months has elapsed.

(o) Participants shall have all the rights established in Chapter 7 (commencing with Section 4700) except as allowed under subsection (g) and subsection (l)(4)(E).

~~(g) SDS Program participants may appeal an error in the calculation of his or her individual budget to the executive director of the regional center within 30 days of the completion of the individual program plan. The individual may appeal to the Director of the Developmental Services, or his or her designee, any decision made by the regional center executive director pursuant to this subdivision within 15 days of receipt of the written decision of the executive director.~~

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~~(h)~~ (p) Only the financial management services provider is required to apply for vendorization in accordance with Section 54300 et seq. of Subchapter 2 (commencing with Section 54300) of Chapter 3 of Title 17 of the California Code of Regulation, for the SDS Program. ~~self-directed services programs.~~ All other service providers shall have applicable state licenses, certifications, or other state required documentation, but are exempt from the vendorization requirements set forth in Title 17 of the California Code of Regulations. The financial management services entity shall ensure and document that all service providers meet specified requirements ~~are qualified~~ for any service that may be delivered to any ~~individual in a self-directed services participant in the SDS Program.~~

~~(i)~~ (q) ~~Individuals~~ Participants in the SDS Program enrolled in a self-directed services program may request, at no charge to the participant, criminal history background checks for persons seeking employment as a service provider ~~or~~ and providing direct care services to the participant individual.

(1) Criminal history records checks pursuant to this subdivision shall be performed and administered as described in subdivision (b) and subdivisions (d) through (h), inclusive of Section 4689.2, and Sections 4689.4 through 4689.6, inclusive, and as same apply to vendorization of providers and hiring of employees to provide services for family home agencies and family homes.

~~(2) The State Department of Developmental Services may enter into a written agreement with the Department of Justice to implement this subdivision.~~

~~(j)~~ (r) ~~Persons.~~ Participants enrolled in a ~~self-directed services~~ the SDS Program pursuant to this section and utilizing an individual budget for services and supports are exempt from Section 4783 and from the Family Cost Participation Program.

~~(k)~~ (s) ~~The State Department of Developmental Services~~ may develop, revise, and maintain regulations implementing the requirements of this section. The adoption of any emergency regulations to implement this section that are filed with the Office of Administrative Law on or before January 1, 2007, shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.

~~(l)~~ (t) Notwithstanding any provision of law, a person receiving services and supports in a congregate setting pursuant to Section 4685.5 may elect to either participate in the IPSD Waiver Program or continue to receive self-directed services within ~~their~~ his or her current scope and existing procedures and parameters.

~~(m)~~ Persons participating in the IPSD Waiver Program or a self-directed services program shall also be included in the self-directed services program. The risk pool shall be allocated by the State Department of Developmental Services to the regional centers through an application a process specified by the State Department of Developmental Services. Funds in the risk pool may be accessed more than once in a lifetime by a participant and shall be used only for unanticipated and substantial change in the individual's service and support needs that were not known at the time the individual budget was set; or relocation of individual residence; or catastrophic injury or illness.

(w) Commencing January 10, 2008, the department shall annually report to the policy and fiscal committees of the Legislature on the following:

(1) Number and characteristics of participants, by regional center.

(2) Types and ranking of services and supports purchased under the SDS program, by regional center.

(3) Utilization of the risk pool, including range and average individual budget augmentations and type of services and supports, by regional center.

(4) Amount of risk pool fund deficits or surpluses, by regional center.

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(5) Comparisons of consumer satisfaction under the SDS program and the traditional service delivery system, by regional center.

(6) The proportion of participants who report that their choices and decisions are respected and supported.

(7) The proportion of participants who report they are able to recruit and hire qualified service provider employees.

(8) Recommendations for program improvement.